



369951

AUG 04 2005

**CERTIFIED MAIL:  
RETURN RECEIPT REQUESTED**

Mr. Robin Lunn  
Mayer, Brown, Rowe and Maw  
71 S. Wacker Drive  
Chicago, IL 60606

**CONCERNING:** Illinois Tool Works, Inc. (ITW Food Equipment Group f/k/a Hobart Corporation)

**RE:** General Notice Letter for the South Dayton Dump and Landfill Site in Moraine, Ohio and Potential for Superfund Alternative Site Approach

Dear Mr. Lunn:

Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency ("EPA") responds to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, to stop additional contamination and to clean-up or otherwise address any prior contamination. EPA documented that such a release occurred at the South Dayton Dump and Landfill Site ("the Site") located in Moraine, Ohio. EPA spent, and is considering spending additional public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that Illinois Tool Works, Inc. (ITW Food Equipment Group f/k/a Hobart Corporation) and other identified parties may be responsible under CERCLA for cleanup of the Site and/or for costs incurred by EPA in cleaning up the Site.

**Explanation of Potential Liability**

Under CERCLA, EPA may require potentially responsible parties ("PRPs") to: (1) perform cleanup actions to protect the public health, welfare, or the environment, and (2) pay costs incurred by EPA in cleaning up the Site, unless the PRP successfully demonstrates any of the applicable statutory defenses.

PRPs include current and former owners and operators of a site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Based on the information collected, EPA believes that Illinois Tool Works, Inc. (ITW Food Equipment Group f/k/a Hobart Corporation) may be liable under Section 107(a) of CERCLA with respect to the South Dayton Dump and Landfill Site, as an arranger, who by contract or agreement, arranged for the disposal, treatment or transportation of hazardous substances at the Site.

### **Actions Taken at the Site**

To date, EPA and the Ohio Environmental Protection Agency ("OEPA") have taken several response actions at the Site under the authority of Superfund. Below is a brief description of the actions EPA and OEPA have taken at the Site in order to gain a basic understanding of risks posed to human health and/or the environment by releases or threatened releases from the Site:

- A Screening Site Inspection completed September, 1991.
- A Focused Site Inspection Prioritization Site Evaluation completed February, 1995.
- A Site Team Evaluation Prioritization completed December, 1996.
- An Aerial Photographic Analysis completed June, 2002.
- A Hazard Ranking Score completed August, 2004.
- Site Proposed to the National Priorities List ("NPL") September, 2004.

### **Potential for a Superfund Alternative Site Approach**

EPA has two main paths to achieve cleanup at Superfund sites that require long-term remediation. The traditional path involves EPA listing the site on the NPL, identifying the PRPs, and working with them to secure the cleanup or payment for cleanup. The alternative is known as the Superfund Alternative sites ("SA" or "SAS") path, which is designed to parallel the NPL path with the exception of listing the site on the NPL.

A SA site should:

- Be eligible for inclusion on the NPL (*i.e.*, currently proposed to the NPL, or would score above 28.5);

- Require long-term response action; and
- Have financially viable and capable PRPs that EPA believes are willing to perform the cleanup work under an appropriate settlement agreement.

The EPA guidance on the SA approach, *Revised Response Selection and Settlement Approach for Superfund Alternative Sites* (6/17/04), discusses the SA approach generally. The Revised SAS Guidance is available at:

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rev-sas-04.pdf>.

SA sites should satisfy the same cleanup standards as NPL sites, and the agreements negotiated at SA sites are very similar to agreements negotiated at NPL sites. SA agreements are eligible for the same settlement incentives as those available at NPL sites (*e.g.*, orphan share compensation, special account funds).

EPA Region 5 believes that the South Dayton Dump and Landfill Site qualifies for the SA approach. Accordingly, EPA is interested in discussing Illinois Tool Works, Inc.'s ("ITW's") willingness to perform a Remedial Investigation and Feasibility Study ("RI/FS") under an SA approach. Shortly EPA will send ITW and the other PRPs a Special Notice Letter. The Special Notice Letter will include a draft Administrative Order on Consent and a draft Statement of Work for Performing the RI/FS at the South Dayton Dump and Landfill Site. The draft Administrative Order on Consent and Statement of Work will form the basis of, and will assist in negotiations.

If ITW and the other PRPs are not interested in the SA approach, EPA will pursue the traditional NPL path. If negotiations for an SA agreement proceed and subsequently reach an impasse, EPA will consider how to proceed based on site-specific circumstances.

### **De Minimis Settlements**

Under CERCLA § 122(g) of CERCLA, whenever practicable and in the public interest, EPA may offer special settlements to parties whose waste contribution to a site is minimal in volume and toxicity, that is, *de minimis* parties.

Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlers to pay their fair share of cleanup costs incurred, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlers receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) contribution protection, which provides a settling party with protection from being sued by other responsible parties for the specific matters addressed in the settlement. Participation in

a *de minimis* settlement means that you are settling directly with EPA as soon as it is possible to do so.

If ITW believes that it may be eligible for a *de minimis* settlement at this Site, please contact Fred Bartman, EPA Enforcement Specialist at (312) 886-0776 or via email at [bartman.fred@epa.gov](mailto:bartman.fred@epa.gov) for additional information on "De Minimis Settlements." Legal questions concerning "De Minimis Settlements" should be directed to Thomas Nash, EPA Assistant Regional Counsel at (312) 886-0552 or via email at [nash.thomas@epa.gov](mailto:nash.thomas@epa.gov).

### **Financial Concerns/Ability to Pay Settlements**

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If ITW believes, and can document, that it falls within this category, please contact Fred Bartman, EPA Enforcement Specialist at (312) 886-0776 or via email at [bartman.fred@epa.gov](mailto:bartman.fred@epa.gov) for information on "Ability to Pay Settlements." In response, you will receive a package of information about the potential for such settlements and a form to fill out with information about ITW's finances, and you will be asked to submit financial records including ITW's federal income tax returns.

Also, please note that, because EPA has a potential claim against ITW, ITW must include EPA as a creditor if ITW files for bankruptcy.

### **Information to Assist You**

EPA encourages communication between ITW, the other PRPs and EPA concerning the Site. EPA recommends that all PRPs meet to select a "steering committee" that will be responsible for representing the group's interests. Establishing a manageable group is critical to successful negotiations with EPA. If this is not possible, EPA encourages each PRP to select one person from its company or organization to represent its interests to EPA.

To assist ITW in its efforts to communicate, please find the following attached information:

- A list of names and addresses of PRPs to whom this letter is being sent.
- A fact sheet that describes the Site.

EPA has established an Administrative Record for the South Dayton Dump and Landfill Site. The Administrative Record contains documents that will serve as the basis for EPA's selection of a cleanup action at the South Dayton Dump and Landfill Site. The Administrative Record for the South Dayton Dump and Landfill Site is located at the Montgomery County Library, Kettering-Moraine Branch, 3496 Far Hills Avenue, Kettering, Ohio and is available to you and to the public for inspection and comment.

The Administrative Record for the South Dayton Dump and Landfill Site is also available for inspection and comment at the Superfund Records Center, EPA Region 5, 77 West Jackson, Chicago, Illinois.

### **Additional Information**

The Superfund Small Business Liability Relief and Brownfields Revitalization Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidance regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, the EPA Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo). Finally, an EPA fact sheet about the Small Business Regulatory Enforcement Fairness Act is enclosed with this letter.

Please give these matters your immediate attention and consider consulting with an attorney. Please contact Fred Bartman, EPA Enforcement Specialist at (312) 886-0776 or via email at [bartman.fred@epa.gov](mailto:bartman.fred@epa.gov) within 15 calendar days of the date of this letter regarding: (1) ITW's willingness to enter into negotiations consistent with the Superfund Alternative approach, or (2) information about why ITW may not be a PRP (e.g., ITW qualifies for an exemption based on the size of its waste contribution to the Site or its financial status). You may also contact Fred Bartman if you have any questions about this letter or would like to arrange a meeting with EPA.

Thank you for your prompt attention to this matter.

Sincerely,

Wendy L. Carney, Chief  
Remedial Response Branch #1

Enclosures

Enclosure 1 - Names and Addresses of PRPs Receiving General Notice Letter  
Enclosure 2 - South Dayton Dump and Landfill Site Fact Sheet  
Enclosure 3 - Small Business Regulatory Enforcement Fairness Act Fact Sheet

cc: Mr. Ken Brown, Illinois Tool Works, Inc.  
Mr. Steve Adams, ITW Food Equipment Group

**Enclosure 1**

**Names and Address of PRPs Receiving General Notice Letter**

**SOUTH DAYTON DUMP AND LANDFILL  
POTENTIALLY RESPONSIBLE PARTY LIST  
LAST UPDATED: July 2005**

1. Barnett, Ronald H.  
2225 E. River Road  
Moraine, OH 45439  
937-299-3526
2. Cargill, Inc.  
Attn: Linda Childers, Legal Department  
15407 McGinty Road West, MS-24  
Wayzata, MN 55391  
952-742-6379
3. Kathryn Boesch  
c/o Coolidge, Wall, Womsley & Lombard  
Attn: Timothy Hoffman  
33 West First Street  
Suite 600  
Dayton, OH 45402  
937-449-5540
4. Margaret Grillot  
c/o Coolidge, Wall, Womsley & Lombard  
Attn: Timothy Hoffman  
33 West First Street  
Suite 600  
Dayton, OH 45402  
937-449-5540
5. Dayton Power & Light Company  
Attn: Amy Wright, Director - Environmental Management  
MacGregor Park  
1065 Woodman Drive  
Dayton, OH 45432  
937-259-7240
6. Delphi Automotive Systems  
f/k/a Delco-Moraine  
Attn: Mark Hester, Assistant General Counsel  
M/C 480-410-166  
5825 Delphi Drive  
Troy, OH 48098  
248-813-1472

7. Mayer, Brown, Rowe and Maw  
Attn: Robin Lunn  
71 S. Wacker Drive  
Chicago, IL 60606  
(312) 701-7274  
RE: Illinois Tool Works, Inc. (ITW Food Equipment Group f/k/a Hobart Corporation)  
  
Illinois Tool Works, Inc.  
Attn: Ken Brown, Corporate Environmental Engineer  
3600 West Lake Avenue  
Glenview, IL 60026  
RE: Hobart Corporation  
847-657-4843  
  
ITW Food Equipment Group  
f/k/a Hobart Corporation  
Attn: Steve Adams  
701 S. Ridge Avenue  
Troy, OH 45374  
937-332-3000 x 2716
8. William Macbeth, Registered Agent  
401 E. Stroop Road  
Kettering, OH 45429  
937-298-1054  
RE: Jim City Salvage, 2335 East River Road, Moraine, OH
9. Miami Conservancy District  
Attn: Steve McHugh, Legal Counsel  
38 E. Monument Ave.  
Dayton, OH 45402  
937-223-1201
10. NCR  
Attn: Susan Chema, Law Department  
1700 S. Patterson Blvd., WHQ-5E  
Dayton, OH 54579
11. The Danis Companies  
f/k/a Industrial Waste Disposal  
Attn: Mark R. Graeser, Vice President  
2 Riverplace  
Dayton, OH 45405  
937-228-1225



12. TRW  
f/k/a Dayton Steel Foundry, Dayton-Walther, Kelsey Hayes  
Attn: Scott Blackhurst, Senior Counsel - Environment  
12001 Tech Center Drive  
Livonia, MI 48150  
(734) 855-3195
13. Valley Asphalt Corporation  
Attn: Dan Crago, Environmental Manager  
11641 Mosteller Road  
Cincinnati, OH 45241  
513-771-0820
14. Waste Management, Inc.  
f/k/a Industrial Waste Disposal  
Attn: Debra Kopsky, Legal Department  
720 Butterfield Road  
Lombard, IL 60148  
630-572-2486

**Enclosure 2**

**South Dayton Dump and Landfill Site Fact Sheet**

## **FACT SHEET**

### **SOUTH DAYTON DUMP and LANDFILL MORaine, OHIO**

The South Dayton Dump and Landfill (SDD) is an 80 acre inactive dump and landfill site located at 1975 Dryden Road (formerly Broadway, formerly Springboro Pike) in Moraine, Montgomery County, Ohio (see figure). Former disposal operations at the SDD have resulted in soil and groundwater contamination (including vinyl chloride and trichloroethylene), which poses a threat to the underlying drinking water aquifer and the adjacent Great Miami River. Groundwater contaminants may also pose a threat to residents in 7 homes located along East River Road southeast of the site through vapor intrusion. The landfill also operated under the name Moraine Recycling and was also known as Grillot's and the Broadway Landfill.

Extraction pits were excavated at the SDD after 1936. Landfill operations conducted between 1941 and 1996 filled in the extraction pits. Before 1970, a significant disposal practice at the SDD was the open burning of materials, primarily vegetation and wood wastes. Between 1950 and 1970, drummed wastes were occasionally accepted at the landfill. The drums were emptied of their contents and either buried or sold to drum recyclers. Between June 1973 and July 1976, drums containing hazardous waste were accepted at the SDD from two nearby Hobart Corporation (Hobart) facilities in Dayton, Ohio. The drums contained cleaning solvents (1,1,1-trichloroethane [TCA]; methyl ethyl ketone [MEK]; and xylene); cutting oils; paint; Stoddard solvent; and machine-tool, water-based coolants. Handwritten notes on an undated tax map from the Montgomery County Combined General Health District (MCCGHD) indicate that other materials accepted at the site included fly ash, foundry sand, steel slag, oils, paint residue, brake fluids, chemicals for cleaning metals and solvents.

In May 1978, the MCCGHD and the Ohio Environmental Protection Agency (OEPA) conducted an inspection of the landfill and noted several problems, including the presence of containers labeled "hazardous." Further evidence of hazardous waste disposal at the SDD comes from a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Notification of Hazardous Waste Site Form submitted by Industrial Waste Disposal Company, Inc. (IWD) on June 9, 1981, which indicates that IWD used the SDD for the disposal of the industrial and municipal wastes of IWD's customers.

Former landfill operations were conducted in at least the south half of the Valley Asphalt Plant. In 2000, evidence of former landfill operations beneath the Valley Asphalt Plant was discovered when drums were encountered during the excavation and installation of a new sewer line. The drums contained: Aroclor 1254, benzene, 2-butanone, chlorobenzene, ethylbenzene, 4-methyl-2-pentanone, toluene, trichloroethylene, vinyl chloride, and xylene. Valley Asphalt removed the drums and the associated soil contamination under OEPA oversight in 2000. No additional environmental follow-up actions were conducted.

*(July 2005)*

In 1985, OEPA prepared a preliminary assessment (PA) for the SDD. The PA indicated that hazardous waste at the SDD poses a threat to the underlying drinking water aquifer and the adjacent Great Miami River. In 1991, U.S. EPA's field investigation team (FIT) conducted a screening site inspection (SSI). Soil analytical results indicated the presence of volatile organic compounds (VOCs), PAHs, polychlorinated biphenyls (PCBs), and metals at concentrations significantly above background concentrations. In 1996, OEPA conducted a Site Team Evaluation Prioritization (STEP) investigation, which included soil, sediment, and groundwater sampling activities. Groundwater analytical results indicated the presence of VOCs, including: 1,2-dichloroethylene (total) at concentrations up to 150 micrograms per liter ( $\mu\text{g/L}$ ) (Maximum Contaminant Level 70  $\mu\text{g/L}$ ); 1,1-dichloroethane at concentrations up to 13  $\mu\text{g/L}$ ; toluene at concentrations up to 15  $\mu\text{g/L}$ ; and chloroethane up to 22  $\mu\text{g/L}$ .

Between 1998 and 2004, the owners of part of the SDD site conducted several investigations at the landfill, including groundwater and surface water sampling. Groundwater analytical results from 2002 revealed maximum concentrations of vinyl chloride at 180  $\mu\text{g/L}$  (Maximum Contaminant Level 2  $\mu\text{g/L}$ ) and trichloroethylene at 76  $\mu\text{g/L}$  (Maximum Contaminant Level 5  $\mu\text{g/L}$ ). In 2004 the maximum concentration of vinyl chloride detected in the groundwater by the owners was 20  $\mu\text{g/L}$  and the maximum concentration of trichloroethylene was 250  $\mu\text{g/L}$ .

The OEPA 1996 STEP documents elevated concentrations of VOCs in groundwater beneath the SDD. The groundwater contamination is present in the Great Miami Aquifer, which is a sole source aquifer that provides drinking water to the following receptors within 4 miles of SDD: (1) the employees of the Delphi Automotive Systems Plant, (2) the residents of the Cities of Oakwood and West Carrollton, and (3) residents of Montgomery County served by Montgomery County's standby wells.

EPA proposed the SDD site to the National Priorities List in September 2004. The National Priorities List is a list of hazardous waste sites that are eligible for evaluation and cleanup under the federal Superfund program. The Hazard Ranking Score for the SDD site is 48.63.

South Dayton Dump, Montgomery County  
 East River Road Residences with Basements,  
 March 3rd, 2005



0 300 600 1,200

Feet

1 inch = 600 feet  
 Scale 1: 7200

Aerial Photograph, year 2000, via Montgomery County

- Residence with basement
- S. Dayton Dump Site Boundary



**OhioEPA**

Prepared by: Matthew Justice

**Enclosure 3**

**Small Business Regulatory Enforcement Fairness Act  
Fact Sheet**

## **Compliance Assistance Centers**

In partnership with industry, universities, and other federal and state agencies, EPA has established national Compliance Assistance Centers that provide Internet and "faxback" assistance services for several industries with many small businesses. The following Compliance Assistance Centers can be accessed by calling the phone numbers below and at their respective websites:

### **Metal Finishing**

(1-800-AT-NMFR or [www.nmfr.org](http://www.nmfr.org))

### **Printing**

(1-888-USPNEAC or [www.pneac.org](http://www.pneac.org))

### **Automotive Service and Repair**

(1-888-GRN-LINK or [www.ccar-greenlink.org](http://www.ccar-greenlink.org))

### **Agriculture**

(1-888-663-2155 or [www.epa.gov/oeca/ag](http://www.epa.gov/oeca/ag))

### **Printed Wiring Board Manufacturing**

(1-734-995-4911 or [www.pwbr.org](http://www.pwbr.org))

### **The Chemical Industry**

(1-800-672-6048 or [www.chemalliance.org](http://www.chemalliance.org))

### **The Transportation Industry**

(1-888-459-0656 or [www.transource.org](http://www.transource.org))

### **The Paints and Coatings Center**

(1-800-286-6372 or [www.paintcenter.org](http://www.paintcenter.org))

## **State Agencies**

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information. For assistance in reaching state agencies, call EPA's Small Business Ombudsman at (800)-368-5888 or visit the Small Business Environmental Homepage at <http://www.smallbiz-enviroweb.org/state.html>.

## **Compliance Incentives**

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses: The Audit Policy (<http://www.epa.gov/oeca/auditpol.html>) and the Small Business Policy (<http://www.epa.gov/oeca/>

[smbusi.html](http://www.epa.gov/oeca/smbusi.html)). These do not apply if an enforcement action has already been initiated.

## **Commenting on Federal Enforcement Actions and Compliance Activities**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an ombudsman ("SBREFA Ombudsman") and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The SBREFA Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your Standard Industrial Code (SIC) designation, number of employees or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

## **Your Duty to Comply**

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

***EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) or related provisions.***



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